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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

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DEPUTY

UNITED STATES OF AMERICA, Plaintiff, v. **Rigoberto HERNANDEZ-Rivera** Defendant.	Magistrate Case No. '08 MJ 0235 COMPLAINT FOR VIOLATION OF Title 8, U.S.C., Section 1326 Attempted Entry After Deportation

The undersigned complainant being duly sworn states:

On or about **January 24, 2008**, within the Southern District of California, defendant **Rigoberto HERNANDEZ-Rivera**, an alien, who previously had been excluded, deported and removed from the United States to **Mexico**, attempted to enter the United States with the purpose; i.e. conscious desire, to enter the United States at the **San Ysidro Port of Entry**, without the Attorney General of the United States or his designated successor, the Secretary of the Department of Homeland Security (Title 6, United States Code, Sections 202(3) and (4), and 557), having expressly consented to the defendant's reapplication for admission into the United States; in violation of Title 8, United States Code, Section 1326.

And the complainant states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.

Signature of Complainant
Claudia Rios, U.S. Customs and Border Protection Enforcement Officer

Sworn to before me and subscribed in my presence this **28th** day of **January 2008.**

United States Magistrate Judge

CEM

PROBABLE CAUSE STATEMENT

I, United States Customs and Border Protection (CBP) Enforcement Officer Mario Avila, declare under penalty of perjury the following to be true and correct:

On January 24, 2008 at approximately 8:38 PM Rigoberto HERNANDEZ-Rivera (Defendant) was discovered hidden in the rear cargo area of a brown 1991 Ford Areostar. During primary inspection there were two visible occupants the driver and a front seat passenger. The primary CBP Officer discovered Defendant who was one of eight undocumented aliens lying on the floor of the cargo area of the vehicle. The vehicle and all its occupants were referred to secondary inspection.

In secondary inspection, Defendant was queried by fingerprints and photographed comparison through the Automated Biometric Identification System (IDENT) and the Automated Biometric Identification System (IAFIS). IDENT/IAFIS returned a match to the query, confirming Defendant's identity and linking Defendant FBI and Immigration Service records.

Immigration Service records queries: including Deportable Alien Control System (DACS) identified Defendant as a citizen of Mexico and a deported alien. DACS information indicates that on or about January 23, 2008an Immigration Judge ordered Defendant deported and removed from the United States. DACS information reveals Defendant was last removed from the United States to Mexico on or about January 23, 2008. Immigration service records contain no evidence that the Defendant has applied for or received permission from the Attorney General of the United States, or the Secretary of Department of Homeland Security to legally re-enter the United States.

EXECUTED ON THIS 25 DAY OF **January 2008** AT **1500 Hours.**

[signature] 7177

Mario Avila / CBP Enforcement Officer

On the basis of the facts presented in the Probable Cause Statement consisting of (1) page, I find probable cause to believe that the defendant named therein committed the offense on **January 24, 2008** in violation of Title 8, United States Code, Section 1326.

[signature]

MAGISTRATE JUDGE

1-26-08 @ 3:12 pm

DATE / TIME

TOTAL P.03